

REMARKS

This is in response to the Office Action that was mailed on September 8, 2005. Minor formal amendments are proposed for claim 1. The proposed changes to claim 1 in no way change the scope thereof, and are intended only to facilitate understanding of the claim. Entry of this Amendment – in order to place the application into condition for allowance or into better condition for appeal – is respectfully solicited. Claim 1 is pending in the application.

Issue under 35 U.S.C. §103

Claim 1 is rejected under 35 U.S.C. §103(a) as being unpatentable over JP 11-189276 in view of JP 2000-16453. The rejection is respectfully traversed.

In JP 11-189276, the shape of hoop (31) is thick and undercut in cross-section, as shown in Figure 1 of the reference. However, the shape of reference hoop (31) is not flat-ring shape, as recited in the present claim. Also, as shown in Figure 1 of the reference, the bottom (13) is up-lifted. However, in the reference the bottom (13) is not flat with the edge of the tube (12), as is the corresponding bottom feature in the present invention.

In contrast to the container shown in the reference, in the container of the present invention, as shown by Applicants' Figure 2 and as reflected in the claim, the shape of hoop (4a) is flat-ring shape and the bottom (3a) is flat with the edge of the tube (2).

Nothing in the cited combination of references suggests Applicants' "modification" of the structure taught by JP 11-189276. Withdrawal of this ground of rejection is accordingly respectfully solicited.

Double Patenting Rejection

Claim 1 is rejected on the ground of obviousness-type double patenting over claims 1-2 of US 6,521,158 B2, a patent with inventors common to the inventors listed in the present application, in view of US 3,259,279 (Nojiri). The double patenting rejection is respectfully traversed. The Examiner acknowledges that the '158 patent fails to teach forming a cylindrical tube and bonding a top cover to an upper end of a hoop. He cites Nojiri as allegedly motivating these crucial elements which are missing from the claims of the '158 patent. A proposed modification cannot change the principle of operation of a reference. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). In the present situation, the '158 patent relates to containers (for use in a caulk gun) for dispensing viscous fluid such as caulking agents. In contrast, the Nojiri reference is directed to a coffee can. Modifying the caulk dispenser of the '158 patent in accordance with the Nojiri teachings relating to coffee cans would change the principle of operation of the container in the '158 patent. It is respectfully submitted that the Examiner has failed to state a sustainable rejection based upon the claims of the '158 patent and the teachings of the Nojiri reference.

Conclusion

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Richard Gallagher (Reg. No. 28,781) at the telephone number of the undersigned below.

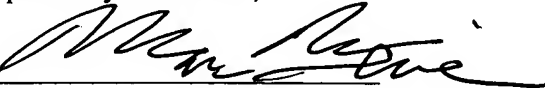
Application No. 10/751,418
Amendment dated December 8, 2005
After Final Office Action of September 9, 2005

Docket No.: 0051-0216P

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: December 8, 2005

Respectfully submitted,

By 

RG

Marc S. Weiner
Registration No.: 32,181
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant